

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

CIVIL ACTION FILE NO.: 4:12-cv-00154-D

NORTH CAROLINA)
ENVIRONMENTAL JUSTICE)
NETWORK, NEUSE RIVERKEEPER)
FOUNDATION, INC., and)
WATERKEEPER ALLIANCE, INC.,)
Plaintiffs)
v.)
MR. DONALD TAYLOR and MS.)
ANNIE TAYLOR, individually and)
d/b/a TAYLOR FINISHING, MR.)
JUSTIN T. MCLAWHORN, and MR.)
AARON MCLAWHORN,)
Defendants)

**DEFENDANT DONALD TAYLOR'S
MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

Defendant Donald Taylor, individually and d/b/a Taylor Finishing ("Taylor"), by and through his undersigned attorneys, hereby moves the Court to dismiss Plaintiffs' Complaint against Taylor pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, on the grounds that this Court lacks subject-matter jurisdiction.

In support of this Motion, Taylor states:

1. Plaintiffs have sued Taylor under the citizen suit provisions of the Clean Water Act ("CWA"), 33 U.S.C. § 1365; and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972. In Count One of Plaintiffs' Complaint ("Complaint") and Amended Complaint, Plaintiffs allege violations of the CWA by Taylor, and in Counts Two and Three of the Complaint and Amended Complaint, Plaintiffs allege violations of RCRA by Taylor.

2. Any party bringing an action under the citizen suit provisions of the CWA or RCRA is required by law to give proper written notice of the suit to the alleged violator in advance of filing. 33 U.S.C. § 1365(b), 42 U.S.C. § 6972(b). Such notice is a mandatory jurisdictional prerequisite to maintaining a suit under either the CWA or RCRA.

3. All counts in the Complaint and Amended Complaint should be dismissed as to Taylor under Rule 12(b)(1), because Plaintiffs have failed to serve a proper Notice of Intent to Sue on Taylor prior to filing the Complaint, as required by the operative federal statutes and regulations.

WHEREFORE, Taylor respectfully requests that the Court enter an Order dismissing Plaintiffs' Complaint without prejudice as to Taylor, and directing such other and further relief as the Court deems just and proper.

This the 13th day of September, 2012.

/s/ Donalt J. Eglinton

Donalt J. Eglinton

N.C. State Bar I.D. No.: 010314

email: dje@wardandsmith.com

Frank H. Sheffield

N.C. State Bar I.D. No.: 016398

email: fhs@wardandsmith.com

Amy P. Wang

N.C. State Bar I.D. No.: 023322

email: apw@wardandsmith.com

For the firm of

Ward and Smith, P.A.

Post Office Box 867

New Bern, NC 28563-0867

Telephone: 252.672.5400

Facsimile: 252.672.5477

Attorneys for Defendant Mr. Donald Taylor, individually
and d/b/a Taylor Finishing

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2012, I electronically filed DEFENDANT DONALD TAYLOR'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: Plaintiffs North Carolina Environmental Justice Network; Neuse Riverkeeper Foundation, Inc.; and Waterkeeper Alliance, Inc., c/o their attorneys of record, Stanley B. Green, Esq.; Chinelo E. Dike-Minor, Esq.; Kelly H. Foster, Esq.; Michael T. Lee, Esq.; and Bethany A. Davis Noll, Esq., and Defendants Mr. Frederick A. McLawhorn, Mr. Justin T. McLawhorn and Mr. Aaron McLawhorn, c/o their attorneys of record, John R. King, Esq. and Lars P. Simonsen, Esq.

/s/ Donalt J. Eglinton

Donalt J. Eglinton

N.C. State Bar I.D. No.: 010314

email: dje@wardandsmith.com

For the firm of

Ward and Smith, P.A.

Post Office Box 867

New Bern, NC 28563-0867

Telephone: 252.672.5400

Facsimile: 252.672.5477

Attorneys for Defendant Mr. Donald Taylor,
individually and d/b/a Taylor Finishing

040232-00002

ND: 4846-7449-7040, v. 3